

thereof, noting that the search for, and analysis of, prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. Where a conclusion as to what is obvious or not to a person of ordinary skill in the art is made by the examiner, the court at Page 1435 states: "Thus when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies." In short, there needs to be a citation of art or evidence of knowledge in the record to support the contention that a particular feature invented by the applicant is considered to be obvious to a person of ordinary skill in the art. It is thus respectfully submitted that the 35 U.S.C. § 103 rejection, based on each of the respective primary references, should be withdrawn. In considering applicant's advance of the art, it is respectfully requested that the following be considered.

The present invention as claimed relates to a container assembly comprising a container closure for an open-ended container. The container assembly is adapted to initially contain uncooked or partially cooked food products.

After the food products have been placed in the container, the container is sealed by means of a flexible membrane, which is sealed to the closure, and further by means of the rigid cap which has a resiliently deformable member juxtaposed to the flexible membrane in use of the closure. Further the rigid cap is shaped so that the flexible membrane can deform by a limited amount in use.

Once the container has been sealed, the contents of the container are heated in order to cook the food completely and also to simultaneously sterilize the interiors of the cans. During the cooking process pressure is built up within the container. It had therefore previously been thought not possible to employ flexible membrane type easy open ends in a continuous mass production of cans, the contents of which require

cooking *in situ* as stated in the description, this is primarily because the heating process causes expansion of gases sealed *within* the cans and caused further gases to evaporate from the food products, with a result that the seals between the flexible membranes and can ends burst, or less desirably leak in a manner that is difficult to detect.

A previous solution to this problem had been the use of an over-pressure cooker that is capable of equalizing the pressures acting on both sides of the flexible membranes during cooking. As set out in page 3 of the description, there are however problems associated with this solution.

By means of the present invention, the flexible membrane is compressed on closure of the container by the relative movement between the cam and follower causing the rigid cap and the container neck to approach one another. When the container is closed, the resiliently deformable member bears down on the flexible membrane so that, in use, a pressure is exerted on the flexible membrane by the resiliently deformable member, which balances the forces exerted on the flexible membrane from within the container.

During the cooking process, the flexible membrane will deform in a direction away from the interior of a container, and towards the rigid cap. Because the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible member towards the laminar member, the maximum deformation of the flexible membrane is limited to ensure that the membrane does not rupture during cooking.

Importantly, the flexible membrane is compressed only in the vicinity of the seal, where the resiliently deformable member makes contact with the flexible membrane and exerts a pressure on the flexible membrane on its first surface in the vicinity of the seal.

The remainder of the flexible membrane is not therefore compressed in this way.

Hiroshi discloses a container made from plastic in which *cooked* food is placed in the container prior to a sterilization process. An important feature of this disclosure is, therefore that the container disclosed therein has to withstand only pressure from *outside* of the container and does not need to be able to withstand a build up of internal pressure at a greater than atmospheric pressure.

The Hiroshi disclosure does not therefore address the problem of how to stop a flexible lid being effectively forced off the container due to forces building up within the container.

The examiner states that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can. However, a person of ordinary skill in the art looking to overcome the problems set out herein above in connection with cans adapted to hold food to be cooked within the can, would not look to the disclosure of Hiroshi, which is directed towards a very different technology. Hiroshi is directed towards container, which is capable of withstanding high pressures exerted from outside the can.

It appears from Hiroshi that the outer lid 5 protects the inner lid 3, which is formed from a plastic sheet, from any pressures built up outside the container. It further appears that the container disclosed in Hiroshi would not be suitable to withstand the types of pressures, which would be built up within the container during the uses envisaged in connection with the present invention. In particular, it would appear that the inner lid 3 is not flexible, and does not therefore deform in any direction. This obviates the need to design the container and the lid to allow for any deformation.

Owen discloses a method of sealing a plastic container in a way, which attempts to overcome problems with container collapse and bubble formation in the contents and/or at the interface between the container and contents. The container is designed to hold food stocks, which generally tend to cause wall collapse in the plastic container in which they are packaged due to their tendency to either contract during temperature changes or absorb or otherwise take up oxygen. The container is thus designed to cope with a lower pressure within the container than outside the container as shown clearly in Figures 3 and 4 of the application. It would not therefore have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar membrane and flexible member less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Applicant wishes to renew its prior arguments and comments with regard to the prior art cited in the present case and incorporates the same herein. It is believed to be significant that the examiner has correctly conceded the limitations of the prior art primary references relied upon with regard to applicant's claims. The missing element should not be termed merely obvious to one of ordinary skill in the art without a citation as to prior art or prior knowledge as discussed in the In re: Lee case. Reconsideration and allowance of the claims presented, including Claims 1, 3 – 4, 6, 8 – 11, 13 – 18 and 22 is requested.

Applicant requests a three-month of extension of time within which to respond to the present Office Action, extending the response date to and including July 29, 2003. The office is hereby authorized to charge extension fees, and any other

fees, as may be required for continued prosecution of this application, to our Deposit Account No. 16-2230, or accordingly credit this account for any overpayment of fees.

Respectfully submitted,

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